

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN MACK COLE**, on January 13, 1999 at  
10:00 A.M., in Room 331 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Mack Cole, Chairman (R)  
Sen. Don Hargrove, Vice Chairman (R)  
Sen. Jon Tester (D)  
Sen. Jack Wells (R)  
Sen. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Branch  
Mary Morris, Acting Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 41, SB 42  
Executive Action: None

**HEARING ON SB 41 AND SB 42**

**Sponsor:** SEN. MIKE TAYLOR, SD 37

**Proponents:** None

**Opponents:** Justice J. A. Turnage, Montana Supreme Court  
Brent Cromley, President, State Bar of Montana  
Tom Ebzery, State Bar of Montana  
Jerome Anderson, State Bar of Montana  
Al Smith, Montana Trial Lawyers Association  
Robert Throssel, Montana Magistrates Association

**Opening Statement by Sponsor:**

**SEN. TAYLOR** acknowledged **Chief Justice J. A. Turnage**, and said this bill is not about people, but about a system. He explained there is a feeling that people have become disenfranchised with government and the judicial system. Thomas Jefferson understood the need for term limits when he said, "To prevent every danger which may arise to American freedom from continuing too long in office, it is earnestly recommended that we set an obligation on the holder of the office to go out after a certain period." Montana judges run on a non-partisan ticket, they do not comment on issues or share their point of view, and that makes it very difficult for a voter to make an informed decision. There is not a rating system in Montana to make informed decisions, like in some other states. Usually judges that win elections are those with the most money and support from the ABA. There is a belief among the people that judges no longer interpret the law, that they make it, and this comes particularly from the referendum process when a majority of judges overrule the vote of the people. **SEN. TAYLOR** stated that he takes this very seriously.

**Opponents' Testimony:**

**Chief Justice J. A. Turnage, Montana Supreme Court**, read written testimony attached as **EXHIBIT(sts09a01)**. **Chief Justice Turnage** then testified that SB 42 proposes to reduce the terms of Supreme Court Justices, only, that it does not affect any other judicial office and present terms, as fixed by the Constitution, are 8 years. **Chief Justice Turnage** then read written testimony attached as **EXHIBIT(sts09a02)**.

**{Tape : 1; Side : A; Approx. Time Counter : 0 - 19}**

**Brent Cromley, President, State Bar of Montana**, explained that the State Bar of Montana is a mandatory organization. In order to practice law in Montana, attorneys are subject to the discipline rules of the Supreme Court and other duties imposed by the State, and attorneys must become a member of the State Bar of Montana in order to practice. The State Bar of Montana only appears at the Legislature when they feel the Bar as a whole either supports or opposes certain legislation, which is the case with SB 41 and SB 42. The State Bar, as does the public, has a vital interest in maintaining a solid and reputable, and experienced judiciary in the state, which we currently have, both at the District Court level and the Supreme Court level.

Lawyers who aspire to the position of judge must first build a reputation as a good attorney. When a person is appointed or elected as a judge, that person has made a major decision to

leave the public arena and the day to day discourse with clients and public groups, and go into an environment where they have to obey certain judicial rules in terms of not communicating with parties who may have cases pending, and they are much more isolated than as a lawyer. In addition, appointment or election as a judge may also require a physical move, which is a major life change in order to become a judge, and a lawyer usually becomes a judge only after he or she has served some period of time practicing law, has established a reputation and usually is more mature. It is, therefore, very difficult to make the return from a judge back to a lawyer. **Mr. Cromley** recommended that the Committee oppose SB 41 and SB 42.

**Tom Ebzery, State Bar of Montana**, read written testimony attached as **EXHIBIT**(sts09a03).

**CHAIRMAN COLE** pointed out that the hearing on SB 42 has not been opened as yet, and testimony already heard regarding SB 42 will be recorded with the hearing on that bill. He added that, following the hearing on SB 42, there will be an opportunity to make additional comments.

**Jerome Anderson, Montana Bar Association**, stated that he approaches these two bills in opposition to them in a different context in that his father, an attorney who began his career in Glendive, had a thriving practice in Billings and was ultimately elected to the Supreme Court. He served one term in the Supreme Court and then, at the end of that term, had to go back into private practice at the age of 68 or 69 years old. It was extremely difficult for him to return to private practice, as he had lost his practice in Billings when he was elected to the Supreme Court. If either or both of these bills are passed, it will discourage younger lawyers from running for judicial positions. Going on the bench is the termination of a career, and the start of an entirely new concept of life, leaving behind what you had before, and it is very difficult to get back into it. Putting limitations such as suggested in SB 41 and SB 42 would be detrimental to having younger, as well as older people of the Bar serve on the bench.

**{Tape : 1; Side : A; Approx. Time Counter : 19 - 27}**

**Al Smith, Montana Trial Lawyers Association**, indicated that one of the concerns expressed, and one of the reasons for this bill, is that it takes a lot of money to elect a judge and whoever has the most money will win. Unfortunately, with these 2 bills together, judges would have to raise even more money, especially if terms are shortened from 8 to 6 years so that Supreme Court Justices have to run more frequently than they do now. In that

case, money may take an even higher prominence than it does already. Judges do not have bureaucrats or other people around them to help them do their job. Judges have a very unique job in that they make the very tough decisions and do most of the work themselves, and it takes a lot of time and experience to become very good at it. With elections we have term limits in that, if a judge is not doing a good job, that judge can be defeated. It is important to look where the state has been with regard to the Judiciary. We have a fine judicial history, and part of the reason is due to the unique system we have regarding the election of judges, as opposed to the federal system of life tenure. There is a check and balance with our current system, but what these bills propose would take it more into the political arena and make the money more important, and we would probably see some partisanship. **Mr. Smith** stated that he thinks it would be better to leave the system the way it is, and urged the Committee to vote no on these two bills.

**Robert Throssel, Montana Magistrates Association**, reported that the judges of the courts of limited jurisdiction oppose SB 41. The judges have expressed the same concerns as **Chief Justice Turnage** and the members of the Bar regarding the experience issue. Another issue unique to the judges of the courts of limited jurisdiction is that they are required to attend annual training sessions sponsored by the Supreme Court. Enrollment fees and travel expenses are paid by the respective cities or counties, and this can be a considerable expense to train and build experience for a Justice of the Peace or City Judge when, with the proposed term limits, that investment would be then lost. **Mr. Throssel** stated that, for this reason, as well as the arguments made in previous testimony, they would ask that the Committee give a Do Not Pass recommendation on this bill.

*{Tape : 1; Side : A; Approx. Time Counter : 27 - 31}*

**Questions from Committee Members and Responses:**

**SEN. WELLS** noted that there has been a lot of comment about experience gained and how judges should stay in position to provide the benefit of that experience. He asked **Chief Justice Turnage** what kind of judgments a judge in the first or second year would make, before gaining any experience, and if there would really be a difference between the judgments made in those early years and those made in later years.

**Chief Justice Turnage** responded that a judge is not going to necessarily change philosophy as the years go by, that a judge's philosophy should be strictly that he or she will uphold the Constitution of the United States and of Montana. Judges are

statutorily mandated to interpret a statute and apply it, if it is clear, or to make decisions based on precedent. There is only a narrow area where there is no statute or precedent to address a particular issue. New judges in District Courts have the problem of managing their caseload and the longer they stay on the bench, the better equipped they are to manage case flow and address the required decisions without delay. (**Chief Justice Turnage** reported at length on the consequences of delays in the court system, and explained the mediation system and the appeals process.) He then reported that the Supreme Court has about 725-730 new filings, of which approximately 450 are appeals from District Court, and each one requires close scrutiny and must go through the process.

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A judge's understanding of the law and ability to handle a large caseload increases with time, as well as stability in his or her decisions. A new District Judge will most likely make errors in ruling on a case, which is normal, but the Supreme Court will undoubtedly hear the appeal. This is the system to correct errors in law or errors in judgment of the court in making findings of fact and applying discretion. No one starts as a judge, or practically anything else, hitting the ground running at full speed. It takes a little time.

**SEN. WELLS** asked if it would be correct to say that the judgments would be as good in the early years as later years, but in later years they would be made faster, the case flow would improve, and the Judge could handle more cases in a given period of time. **Chief Justice Turnage** answered yes, adding that not all decisions would be as good as they should be in the early years.

**SEN. WELLS** asked **Mr. Ebzery** if anyone has been voted out of office when running unopposed and, if so, when that happened and how many times it may have happened in the past 40-50 years. **Mr. Ebzery** deferred the question to **Chief Justice Turnage**, who responded that the framework was provided in 1972, but that he does not know of any major organized efforts to vote a judge out. He then explained the system for filling a vacancy on the Supreme Court. Applicants have 30 days to file a request to be considered as a nominee, followed by 30 days for public comment. At the end of that period, the Judicial Nomination Commission, comprised of 4 members appointed by the Governor, 2 appointed by the Supreme Court and 1 District Judge appointed by District Judges, will interview the applicants and submit a list of not less than 3 nor more than 5 names to the Governor. The Governor must select one of those individuals, and that person must then face the voters in the next general election.

**SEN. TESTER** asked if anyone could tell the Committee the average length of service for Supreme Court Justices or District Court Judges. **Chief Justice Turnage** indicated that information could be furnished to the Committee. **SEN. TESTER** then asked if that length of service has been fairly consistent over the past 50-60 years, or if the length of service has increased. **Chief Justice Turnage** responded that he thinks it has been fairly stable. He added that Supreme Court Justices are younger now than they used to be, on average. **CHAIRMAN COLE** asked if the Committee would be able to get this information, and **Chief Justice Turnage** said he would provide that information to the Committee.

**EXHIBIT (sts09a04)**

**CHAIRMAN COLE** announced that the Committee will now hear SB 42, and that the sponsor can close on both SB 41 and SB 42 at the same time.

*{Tape : 1; Side : B; Approx. Time Counter : 39 - 49}*

**HEARING ON SB 42**

**Sponsor:** **SEN. MIKE TAYLOR, SD 37**

**Proponents:** **None**

**Opponents:** **Brent Cromley, President, State Bar of Montana**

**Opening Statement by Sponsor:**

**SEN. TAYLOR** asked if **Mr. Niss** would prepare an amendment to SB 42 to amend the language to read "from 8 years to 6 years".

**Opponents' Testimony:**

**Brent Cromley, President, State Bar of Montana**, reported that he does not know of any occasions in Montana but that, in California, judges have been elected out of office. He stated that he thinks it speaks to the quality of our judiciary that no judge has ever been voted out in Montana, adding that a judge is vulnerable, that they have a difficult time raising money, perhaps due to not being affiliated with a party, and it is more difficult to run for a judicial position.

**Questions from Committee Members and Responses:** **None**

**Closing by Sponsor on SB 41 and SB 42:**

**SEN. TAYLOR** thanked the Committee for a good hearing, and thanked all who testified. He indicated that he understands the remarks made by the opponents, and that the question to the Committee is have term limits reduced the quality of legislators. He pointed out that the cost of elections for everyone is great, although fundraising may be different for judicial candidates. He noted that he would support a bill that has been introduced to increase the number of judges in certain districts, which will lessen the caseload. He then pointed out that the Governor, Secretary of State and Attorney General also have to give up their career in private practice. When our Founding Fathers created this form of government, they wanted to balance the 3 equal powers, and it has worked very successfully in most cases but, since that time, term limits for 2 branches of government and not the third tips that balance. **SEN. TAYLOR** stated that term limits should be for all branches of government, adding that, in his opinion, term limits would attract a different kind of judge, those not looking for a career on the bench. He then asked what if there was a pool of judges to select from for different cases. Our courts make the laws, judges hold the power to affirm or veto every piece of legislation that the people's representatives might pass. And, despite their decisions and their indifference to the wrong suffered by many, they cannot be removed. He stated that, at the very least, he would like the people of Montana to have a better understanding of the judicial system and who they are voting for, instead of just guessing, noting that very few people know who the judges are. He added that he would like to see the Montana Bar Association set up a system that rates judges, similar to the system in Colorado, so the people could have an idea how to vote.

**CHAIRMAN COLE** asked if any members of the Committee had questions regarding SB 42 before the hearing was closed.

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**SEN. HARGROVE** asked **Mr. Cromley** to discuss the relative merits between appointment and election for judges without any specific office in mind. **Mr. Cromley** stated that there is a long-standing debate on this point, and that he is not sure of his own position, noting that the alternative to election is appointment for life. Federal judges are appointed and serve for life, which seems to work well but, on the other hand, the system in Montana seems to work well, too. He noted that he sympathizes with those judges and justices who have to run for election, because it is difficult to raise funds. He reiterated that he does not have a personal opinion as to which is better, that he believes the Montana judiciary system is working well and he would not particularly support changes in that system without a lot more study, adding that he also believes the federal system of

appointments for life is working well, although it depends upon the quality of the persons running and the interest of the public in having input.

**CHAIRMAN COLE** closed the hearing on SB41 and SB42, noting the Committee would probably take executive action on these bills on Friday.

**SEN. WILSON** offered written testimony received from the Maclay Law Firm **EXHIBIT(sts09a05)**.

**CHAIRMAN COLE** advised the Committee Members that they will hear SB11 tomorrow, which may take quite a while because the bill proposes changing the committee system with regard to interim committees, and it is a pretty thick bill. He asked the secretary to distribute copies of the SB11 to the Committee Members prior to the hearing for their review.

**SEN. HARGROVE** asked if any of the other Committee Members were briefed on this bill while on an interim committee, as was the Veterans' Affairs Committee. He explained that the purpose of the bill is to make more efficient use of Legislative Services staff. There was general discussion regarding SB11.

#### ADJOURNMENT

Adjournment: 11:10 A.M.

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SEN. MACK COLE, Chairman

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MARY MORRIS, Acting Secretary

MC/MM

**EXHIBIT(sts09aad)**